IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13028 of 2014

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1. Kamla Devi W/o Late Dr. Ramji Singh Resident of Mohalla Adampur, Swami Vivekanand Marg, P.S. Kotwali, District Bhagalpur.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar.
2. The Principal Secretary, Department of Health, Government of Bihar.
3. The Principal Secretary, Department of Finance, Government of Bihar.
4. The Director-in-Chief, Department of Health, Government of Bihar.
5. The Superintendent, Jawahar Lal Nehru Medical College & Hospital, Bhagalpur.
6. The Treasury Officer, Bhagalpur.
7. The Accountant General (A&E), Bihar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Yugal Kishore, Sr. Adv.
		Mr. Bipin Krishna Singh, Adv.
For the State	:	Mr. Ajit Kumar, G.A.-9
For the Accountant General	:	Mr. Raj Nandan Prasad, Adv.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 21-08-2017

This writ application has been filed by the petitioner for a direction to the respondents to revise pension of her husband Late Dr. Ramji Singh by modifying the earlier orders dated 30.05.2000 and 21.05.2010 and to pay the arrears along with interest as also for a direction to revise the family pension payable to the petitioner.

2. The case of the petitioner is that her husband, Late Dr. Ramji Singh, was promoted to Super Time Selection Grade comprising 2½ % of Bihar Health Service under cadre promotion with effect from 02.03.1987 and his basic pension was fixed at Rs.1433/- with effect from 01.10.1987 after his superannuation on 30.09.1987 from the post of Medical Officer, Jawahar Lal Nehru

Medical College and Hospital, Bhagalpur, which was revised to Rs.2494 with effect from 01.03.1989, as consequent to pay revision the Super Time Scale of Rs.2225-2675 was replaced by scale of Rs.4100-5300 with effect from 01.01.1986. The pay scale of Rs.4100-5300 was replaced by the scale of 14300-18300 with effect from 01.01.1996, which was replaced by pay scale of Rs.37400-67000 – Grade Pay 8700 with effect from 01.04.2007 on account of pay revision.

3. Mr. Yugal Kishore, learned Senior Advocate for the petitioner has submitted that after implementation of the 5th pay revision scale with effect from 01.04.1997 the pension of the late husband of the petitioner was revised, but his pension was subsequently reduced arbitrarily by the respondents, vide order passed on 30.05.2000 with effect from 01.04.1997 against which he made representation before the authorities and claimed that reduction of his pension with effect from 01.04.1997 was illegal and arbitrary, but no heed was paid to his request. Later on, a clarification on the representation of the late husband of the petitioner came on 31.01.2003. Subsequently, 6th pay revision scheme was implemented with effect from 21.05.2007, but, in the revised pay scale also, the pension of late husband of the petitioner was fixed in the reduced scale.

4. He has submitted that on 09.05.2012 the representation

of the late husband of the petitioner was rejected by the respondents. Subsequently, he died on 15.01.2013 and, after his death, even family pension of the petitioner has been fixed in a reduced scale.

5. The stand of the Accountant General, Bihar in the counter affidavit was that the Health Department had intimated that the husband of the petitioner was not entitled to the scale of Rs.14300-18300/- and, hence, he was not entitled to the replacement scale of Rs.37400-67000/- and, on that basis, the pension of the husband of the petitioner was reduced.

6. The respondent State also took a plea that the Government of Bihar had done away with the Super Time Scale with effect from 01.01.1996 and, as such, the pension of Dr. Ramji Singh was fixed on the basis of pay scale of Rs.6500-10500 with effect from 01.01.1996 and that he was not eligible for pension as per Pay Band IV with effect from 01.01.2006.

7. In reply to the above argument, Mr. Yugal Kishore, learned Senior Advocate for the petitioner has submitted that the Government of Bihar had done away with the concept of selection grade with effect from 01.01.1996 and, in that event, it could not have retrospective effect to the disadvantage of the persons already retired. He has contended that vide letter no. Fin(27) Pen-18/2003-297-V, Patna dated 31.01.2003, which was issued to remove anomalies in fixation of pension of employees, who had retired prior to

01.01.1996, it had already been clarified that such amendment in service rules cannot have retrospective effect.

8. During pendency of the writ petition, it appears that the respondent State realized its mistake and clarified that the late husband of the petitioner was entitled to the pay scale of Rs.14300-18300 with effect from 01.04.1997 and subsequent replacement scale.

9. A supplementary counter affidavit has been filed on behalf of the respondent no.7 wherein it has been stated that as per the Finance Department Resolution No. 543 dated 20.07.2017 it has been communicated that the late husband of the petitioner was entitled to the pay scale of Rs.14300-18300/- with effect from 01.04.1997 and the replacement scale of Rs.37400-67000/- with effect from 01.04.2007. Accordingly, the pensionary benefits have been revised and revised authority of pension has already been issued, vide office letter no. Pen 2/Pen 110817023063/137625 P2 dated 11.08.2017 (Annexure-C to the 2nd supplementary counter affidavit).

10. Mr. Raj Nandan Prasad, learned Advocate appearing for the Accountant General, Bihar has submitted that the revised authority for family pension has also been issued by the office of the Accountant General.

11. Learned counsel for the State has submitted that since the grievance of the petitioner has already been redressed, the writ petition has become infructuous.

12. Mr. Yugal Kishore, learned Senior Advocate appearing for the petitioner does not dispute the fact that the grievances of the petitioner in respect of revision of pension and family pension have been redressed. However, his contention is that the petitioner has been denied substantial amount of pension and family pension for quite a long time due to wrong fixation of pension of her late husband and, after his death, on account of wrong fixation of family pension by the respondents. He has submitted that in the circumstances the petitioner is entitled to receive interest over the due arrear amount of pension and family pension.

13. On the other hand, contesting the prayer of the petitioner for grant of interest, learned counsel for the State has submitted that there was no deliberate denial of any amount of pension to the husband of the petitioner or the family pension to the petitioner. The admissible payments were made to the petitioner's husband immediately after his retirement and even the family pension was also paid to the petitioner immediately after the death of her husband. However, the delay was caused because of interpretation of certain circulars of the State Government. Hence, according to him, the petitioner is not entitled to receive interest.

14. Having considered the rival submissions, as I find that there is no dispute to the fact that the part of pension, which became due since 01.04.1997 and family pension, which became due from

15.01.2013 was not paid on account of wrong interpretation of its own circular by the State Government, I deem it fit and proper to direct the respondent State to pay Rs.1,00,000/- (Rupees one lac) as lump sum compensation to the petitioner instead of interest over the arrear amount of pension and family pension. Ordered accordingly. The respondents are directed to make payment of the lump sum amount within three months from the date of receipt/production of a copy of the order, failing which the respondents shall be liable to pay interest at the rate of 9% per annum over the arrear amount of pension and family pension from the date the payments became due till the date of their actual payment.

15. The writ petition is disposed of with the aforesaid observations and direction.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	12.09.2017
Transmission Date	